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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
WILSER, MICHAEL P	

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/662,936	HUSAIN ET AL.	
	Examiner	Art Unit	
	Michael Wilser	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 August 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-30 are pending in this application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-2, 11-12, 21-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1, 12, and 23 of Copending Application No. 10/662889. Although the conflicting claims are not identical, they are not patentably distinct from each other because both inventions comprise substantially the same elements. For example, claims 1-2 functions performed by the steps are the same and obvious as the steps of claim 1 and metadata (which would be obvious to one of ordinary skill in the art that the message could contain) of Copending Application No. 10/662889 (entering user input to a source application, generating a message in response to user input, storing the message, translating the message to a portable format, retrieving the portable message, executing the instructions on one or more additional computers, and performing the task on the first computer). This is a

provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 11-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 11-20 are drawn to a computer readable storage medium, which the applicant has defined in the specification (page 63, lines 4-6) to encompass an electronic transmission signal. The Office considers an electronic signal to be a form of energy. Energy is not a series of steps or acts and this is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefore not a compilation of matter. Thus, an electronic transmission signal does not fall within any of the four categories of invention. Therefore, Claims 11-20 are not statutory.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 8-15, 18-25, and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenton (US 6,845,507).

7. As per Claim 1, Kenton teaches the invention as claimed including a method comprising:

a. entering user input to a source application on a first computer system (TMA 102, Figure 4) to request performance of a task (column 4, lines 38-41);

b. generating a message in response to the user input (column 5, lines 19-22), wherein the message comprises one or more instructions which are computer-executable to perform the task (column 3, lines 61-64 & column 5, lines 40-43);

c. storing the message in a message log (column 6, lines 14-19);

d. translating the message from an original format to a portable format on the first computer system, wherein translating the message from the original format to the portable format comprises generating a portable message (column 11, lines 35-38);

e. retrieving the portable message from the message log (column 6, lines 14-17); and

f. executing the one or more instructions to perform the task again on one or more additional computer systems (column 4, lines 37-41 & column 6, lines 14-19).

8. As per Claim 2, Kenton further discloses performing the task on the first computer system in response to the user input (column 5, lines 32-40).

9. As per Claim 3, Kenton further discloses wherein the portable format comprises XML, and the portable message comprises an XML message (column 11, lines 35-38).

10. As per Claim 4, Kenton further discloses:

a. sending the portable message from the first computer system to a second computer system using peer-to-peer message passing between the first computer system, the second computer system, and optionally one or more intermediary computer systems (Figure 4); and

b. performing the requested task on the second computer system (column 6, lines 14-19).

11. As per Claim 5, Kenton further discloses routing the portable message to a target application on the second computer based on metadata which comprise identifying characteristics of the source application (column 7, lines 55-58).

12. As per Claim 8, Kenton further discloses wherein the message log comprises a queue (column 5, line 19-31).

13. As per Claim 9, Kenton further discloses sorting the message log by one or more elements of the metadata (column 7, lines 55-58).

14. As per Claim 10, Kenton further discloses wherein the message is generated through a distributed computing infrastructure (column 10, lines 20-25).

15. As per Claims 11-15 and 21-25, they are rejected for the same reason as Claims 1-5 above.

16. As per Claims 18-20, and 28-30, they are rejected for the same reason as Claims 8-10 above.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

18. Claims 6-7, 16-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenton (US 6,845,507) in view of Pabla et al. (US 7,127,613).

19. As per Claim 6, Kenton does not explicitly disclose that the peer-to-peer message passing comprises broadcast peer-to-peer message passing. However, Pabla discloses a method in which the peer-to-peer message passing is broadcast peer-to-peer message passing (column 16, lines 61-67 & column 17, lines 1-28).

20. It would have been obvious to one of ordinary skill in the art at the time of invention to have broadcast peer-to-peer message passing be the peer-to-peer message in Kenton's invention. One would have been motivated to use broadcast peer-to-peer message passing since sending a message from one computer to at least one or more additional computers is well known within the computing arts and is a known form of message passing.

21. As per Claim 7, Pabla further discloses wherein the peer-to-peer message passing comprises multicast per-to-peer message passing (column 16, lines 34-42).

22. As per Claims 16-17 and 26-27, they are rejected for the same reason as Claims 6-7 above.

Response to Arguments

23. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Wilser whose telephone number is (571) 270-1689. The examiner can normally be reached on Mon-Fri 7:30-5:00 EST (Alt Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPW
October 16, 2007

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